COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

CASE OF THE FORMER KING OF GREECE AND OTHERS
v. GREECE

(Application no. 25701/94)

JUDGMENT

STRASBOURG

23 November 2000

In the case of the former King of Greece and Others v. Greece,

The European Court of Human Rights, sitting as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,
Mrs E. PALM,
Mr J.-P. COSTA,
Mr L. FERRARI BRAVO,
Mr GAUKUR JÖRUNDSSON,
Mr L. CAFLISCH,
Mr I. CABRAL BARRETO,
Mr W. FUHRMANN,
Mr B. ZUPANČIČ,
Mrs N. VAJIĆ,
Mr J. HEDIGAN,
Mr M. PELLONPÄÄ,
Mrs M. TSATSA-NIKOLOVSKA,
Mr T. PANŢÎRU,
Mr E. LEVITS,
Mr K. TRAJA,
Mr G. KOUMANTOS, ad hoc *judge*,

and also of Mrs M. DE BOER-BUQUICCHIO, *Deputy Registrar*,

Having deliberated in private on 14 June and 25 October 2000,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court, in accordance with the provisions applicable prior to the entry into force of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") [*Note by the Registry.* Protocol No. 11 came into force on 1 November 1998.], by the European Commission of Human Rights ("the Commission") on 30 October 1999 (Article 5 § 4 of Protocol No. 11 and former Articles 47 and 48 of the Convention).

2. The case originated in an application (no. 25701/94) against the Hellenic Republic lodged with the Commission under former Article 25 of the Convention by the former King of Greece and eight members of his family, on 21 October 1994. The applicants alleged that Law no. 2215/1994, which was passed by the Greek parliament on 16 April 1994 and came into force on 11 May 1994, violated their Convention rights. The applicants were represented by Messrs Nathene & Co., solicitors in London. The Greek Government ("the Government") were represented by their Agent,

Mr L. Papidas, President of the State Legal Council, and subsequently by his successor, Mr E. Volanis.

3. The Commission declared the application partly admissible on 21 April 1998 in so far as it concerned the former King of Greece, his sister, Princess Irene, and his aunt, Princess Ekaterini ("the applicants"). In its report of 21 October 1999 (former Article 31 of the Convention) [*Note by the Registry*. The report is obtainable from the Registry.], it expressed the unanimous opinion that there had been a violation of Article 1 of Protocol No. 1 and that it was not necessary to examine whether there had been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

4. On 6 December 1999 a panel of the Grand Chamber determined that the case should be decided by the Grand Chamber (Rule 100 § 1 of the Rules of Court). Mr C.L. Rozakis, the judge elected in respect of Greece, who had taken part in the Commission's examination of the case, withdrew from sitting in the Grand Chamber (Rule 28). The Government accordingly appointed Mr G. Koumantos to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

5. The applicants and the Government each filed a memorial.

6. A hearing took place in public in the Human Rights Building, Strasbourg, on 14 June 2000.

There appeared before the Court:

(a) *for the Government*
Mr P. GEORGAKOPOULOS, Senior Adviser,
State Legal Council, *Delegate of the Agent*,
Mr M. APESSOS, Adviser,
State Legal Council,
Mrs K. GRIGORIOU, Adviser,
State Legal Council,
Mr D. PANNICK QC, Barrister,
Ms D. ROSE, Barrister,
Prof. D. TSATSOS,
Prof. N. ALIVIZATOS, *Counsel*,
Mr Ch. PAMPOUKIS, Assistant Professor,
Mr G. KATROUGALOS, *dikigoros* (lawyer),
Mr E. KASTANAS, Member of the Special Legal Service,
Ministry of Foreign Affairs,
Mr P. LIAKOURAS, Special Adviser,
Ministry of Foreign Affairs, *Advisers*;

(b) *for the applicants*
Lord LESTER OF HERNE HILL QC,
Mr J. BRAVOS,

Mrs M. CARSS-FRISK,
Mrs N. ARNAOUTIS,
Prof. A. GEORGIADES,
Mrs A. GEORGIADES, *Counsel*.

The Court heard addresses by Lord Lester of Herne Hill, Mr Pannick, Professors Tsatsos and Alivizatos.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. In 1864 a crowned democracy was established in Greece, when George I, son of the Danish King Christian IX, was elected King and ascended the throne. The former King Constantinos of Greece (the first applicant) is a direct descendant of King George I. He ascended the Greek throne in 1964, at the age of 24, in succession to his father King Paul I.

A. The applicants' property and their ownership titles

8. The applicants have produced the following ownership titles relating to their property in Greece.

1. The Tatoi estate

9. The former King claimed that he was the owner of an area of 41,990,000 sq. m. of land and a building at Tatoi. This property was formed during the reign of King George I (the first applicant's great-grandfather) through successive purchases of pieces of land.

– By deed no. 24101 of 15 May 1872, King George I purchased from Scarlatos Soutzos the Liopessi-Mahonia estate and from Soutzos's wife the adjacent Tatoi estate, for a total of 300,000 drachmas (GRD).

– Under Law no. 599 of 17 February 1877, the Greek State transferred in full and absolute ownership to King George I the forest known as Bafi, of approximately 15,567,000 sq. m. The applicants have produced documents which demonstrate that, while the Greek government had expressed the intention of donating the Bafi forest to King George I, the latter did not wish to acquire this land through a donation, but insisted on purchasing it at a price fixed by the government. In the event, a compromise was reached, whereby the Bafi forest was expressed to be "conceded" (rather than "donated") to King George I. In return, the latter deposited GRD 60,000 with interest at the National Bank.

Approximately 1,000,000 sq. m. of the above property were subsequently exchanged for a property of equal surface area adjacent to Tatoi, which belonged to local landowners, who were paid GRD 3,000 by King George I to compensate for the difference in value between the exchanged properties.

– By deed no. 55489 of 4 April 1891, King George I purchased from Andreas Syngros a part of the Kiourka estate, which is adjacent to the Tatoi estate, for GRD 110,000.

– By certificate no. 382 of 20 October 1878, the mortgage registrar of Marathonas attests that the Keramydi estate belonged to King George I and was devolved to him by his predecessors in title, Ioannis Malakindis, Dimitrios Vassilios and Panagis Dionyssiotis, George Kyriazis, George Sardelis and Stamata Sykaminioti. These persons had acquired the property in parts through successive purchases from 1844 to 1878.

10. By his holograph will dated 24 July 1904, King George I made the Tatoi estate a family trust (*familia-fideicommis*) in order to serve as a permanent residence of the reigning King of the Hellenes. However, according to the then prevailing Byzantine-Roman law, a family trust lasted only for four successions, which meant that the trust was released in the fourth successor.

11. Following the death of King George I on 5 March 1913, Tatoi devolved to his successor, King Constantinos I, and following the latter's deposition from the throne in 1917, to his second-born son, King Alexander. After the latter's death in 1920, Tatoi came back to King Constantinos I, who had in the meantime returned to the throne. After the latter's abdication in September 1922, Tatoi passed to his first-born son, Crown Prince George II.

12. Then, following the abolition of the monarchy and the proclamation of the Republic by resolution of the fourth Constituent Assembly dated 25 March 1924, the Greek State expropriated Tatoi by Law no. 2312 of 14 and 20 August 1924, while the Bafi estate passed *ipso jure* and without any compensation to the State.

13. Following the return of King George II to the throne, the Emergency Law of 22 January 1936 gave Tatoi back to the King in full ownership and possession, with the exception of the Bafi-Keramydi estate (an area of 3,785,000 sq. m.) which, in the meanwhile, had been allotted to landless refugees. The explanatory report on this Law stated, *inter alia*, that the expropriation had been in breach of Article 11 of the 1911 Constitution, according to which a compulsory expropriation always had to be preceded by compensation to the owner in an amount to be determined by the courts.

14. After the death of George II on 1 April 1947, his brother Paul came to the throne. Legislative Decree no. 1136 of 5 and 11 October 1949 stated the following: “The Tatoi estate, which was returned ... to the late King George II, has become the unreserved, free and exclusive property of HM King Paul from his accession to the throne”. Following King Paul's

death on 6 March 1964, the property came to his son and successor Constantinos II (the first applicant), by virtue of his father's holograph will dated 8 December 1959.

2. The Polydendri estate

15. The former King and Princess Irene claimed that they each owned 101.5/288 of an area of 33,600,000 sq. m. of land at Polydendri, and that Princess Ekaterini owned 36/288 of that area. This area was formed through the following chain of transfers.

– By deed no. 38939/1906, Hassan Efendi Leondaritis, a landowner of Larissa, transferred and sold to Crown Prince Constantinos I the estate known as Polydendri, for the sum of GRD 397,500. Following the death of Constantinos I, the estate devolved to his intestate heirs as follows: to his wife Sophia 2/8 *ab indivisio*, and to each of his children George II, Paul, Helen, Irene, Ekaterini (the third applicant) and the daughter of his predeceased son Alexander, Alexandra, 1/8 *ab indivisio*.

– By deeds nos. 79847 of 18 February 1924 and 80452 of 24 March 1924, the above co-heirs and co-owners (with the exception of Ekaterini) transferred and sold 7/8 *ab indivisio* of the estate to Athanassios Galeos, a captain in the merchant navy, for the sum of GRD 4,585,000. As regards the 1/8 *ab indivisio* share of Princess Ekaterini, a price of GRD 650,000 was initially agreed and the land was leased to the new owner pending completion of the required formalities, whereupon the land would be transferred to him.

– By deed no. 4289 of 20 March 1925, Athanassios Galeos and others formed the "Forest Company" (Ανώνυμος Δασική Εταιρία), to which Athanassios Galeos transferred the 7/8 *ab indivisio* of the estate he had acquired. This company was dissolved by resolution of its general assembly dated 12 May 1938. By deed no. 22408 of 7 October 1939, the liquidators of the company transferred and sold to Crown Prince Paul the 7/8 *ab indivisio* of the estate for the sum of GRD 4,000,000 which was paid with funds from the dowry of his wife, Princess Frederica. After his death, 14/32 of his share of Polydendri devolved to his widow, and 14/96 to each of his three children, Sophia, Constantinos (the first applicant) and Irene (the second applicant). In 1968 Princess Sophia declined the inheritance, and her share of the estate was added to the share of the remaining heirs pro rata. After the death of Queen Frederica on 6 December 1981, and in the absence of a will, her 49/96 *ab indivisio* share of Polydendri devolved to her children in equal shares, each child thus receiving 49/288 of her share.

3. The Mon Repos estate on the island of Corfu

16. The original title on this property is minutes no. 278 of 1 June 1864 of the Provincial Council of Corfu, by which the Council decided to offer to King George I, in recognition of his contribution to the accession of the

Ionian islands to Greece, the use of the house in which the British Magistrate of the Supreme Council once lived, together with the surrounding area, situated at the place known as "Aghios Pandeleïmon of Garitza". The existing records from that time do not indicate the surface area, exact location or boundaries of the donated estate. The donation was later expressly recognised by deed no. 7870/1887.

17. Between 1870 and 1912 King George I enlarged the above estate by successive purchases of certain smaller or bigger tracts of land belonging to third parties, situated around or inside the farm. After two purchases made by George II, Mon Repos attained its final surface area of approximately 238,000 sq. m.

18. Following the death of King George I, Mon Repos devolved to Prince Andreas, by virtue of King George's holograph will dated 24 July 1904.

19. After the 1922 Revolution and by decision no. 1767/1923, the compulsory expropriation of Mon Repos was proclaimed in favour of the State in order to be used as the summer residence of the reigning King. In 1931 the administrative eviction of Prince Andreas was ordered. Legal proceedings were then instituted and, by judgment no. 57/1934, the Corfu Court of Appeal (Εφετείο) recognised Prince Andreas as the lawful owner of the property and ordered the return of the estate to him. Following the restoration of the "crowned democracy", Emergency Law no. 514/1937 expressly provided that Mon Repos be conceded and transferred in full ownership and possession to Prince Andreas.

20. By deed no. 11909/1937, Prince Andreas sold Mon Repos to King George II against a life annuity of GRD 400,000. King George II died on 1 April 1947. His co-heirs donated their shares to King George's brother, King Paul, who acquired full ownership of Mon Repos (deeds nos. 3650/1957, 3816/1957 and 5438/1959). Following King Paul's death, and by virtue of his holograph will, Mon Repos devolved to his widow Frederica (usufruct) and to his son, the first applicant (bare ownership). The usufruct was terminated by the death of Queen Frederica on 6 December 1981, and the first applicant acquired full title ownership of Mon Repos.

21. On or about 5 August 1994, following the enactment of Law no. 2215/1994 (see paragraph 41 below), the residence of Mon Repos was broken into. It is now occupied by the municipality of Corfu.

B. The status of the property during the military dictatorship (April 1967-July 1974) and after the restoration of democracy

22. On 21 April 1967 there was a military coup in Greece. The former King remained in the country until 13 December 1967, when he left for Rome.

23. On 15 November 1968 the military regime promulgated a new Constitution (the former had been enacted in 1952), which was amended in 1973 when the former King was deposed (see paragraph 25 below). Article 21 of the 1968 Constitution (as amended in 1973) guaranteed the right of property and provided that nobody was to be deprived of property save in the public interest and following payment of full compensation, the amount of which was to be determined by the civil courts. However, Article 134 § 3 of the same Constitution provided for the enactment of a unique legislative measure which would have the effect of confiscating the movable and immovable property of the former King and the royal family.

24. Between 21 April 1967 and 31 May 1973 the military dictatorship formally maintained the "crowned democracy", despite the former King's self-imposed exile.

25. On 1 June 1973 the military regime purported to abolish the "crowned democracy", to declare the former King and his heirs deposed and to establish a presidential parliamentary republic.

26. In October 1973 the military dictatorship issued a legislative decree (no. 225/1973), pursuant to Article 134 § 3 of the 1968 Constitution (as amended in 1973), whereby all movable and immovable property of the former King and the royal family was confiscated with effect from the date of publication of the decree in the Official Gazette (4 October 1973), and whereby title to the confiscated property passed to the Greek State. The three estates in question were specifically mentioned as forming part of the immovable property being confiscated.

27. The above decree provided for compensation in the sum of GRD 120,000,000 to be distributed amongst the members of the royal family whose property was to be confiscated, and this sum was deposited in a bank account with a view to being claimed by the royal family. The former King's share of the compensation was stated to be GRD 94,000,000 and Princess Irene's share GRD 12,000,000. No compensation was provided for Princess Ekaterini. It was further specified that the compensation had to be claimed by 31 December 1975. No part of it was ever claimed.

28. On 24 July 1974 the military dictatorship in Greece was replaced by a civilian government under the leadership of Mr Karamanlis.

29. By an Act of 1 August 1974 ("the First Constitutional Act of 1974"), the government revived the 1952 Constitution, except for the provisions relating to the form of government (Article 1).

30. Article 10 of this Act provided that, until the National Assembly was reconvened, the legislative power vested in the Council of Ministers was to be exercised through legislative decrees. Article 10 § 2 provided that such legislative decrees would be capable of having retrospective effect as regards any issues arising from any Constitutional Acts after 21 April 1967. Article 15 provided that the 1968 Constitution (as amended), and all other

Constitutional Acts or Acts of a constitutional character passed under the military dictatorship after 21 April 1967, were repealed.

31. Pursuant to Articles 1 and 10 of the First Constitutional Act of 1974, the government issued a legislative decree (no. 72/1974) which provided for the property of the former King and the royal family to be administered and managed by a seven-member committee until the form of regime had been finally determined.

32. The above decree was implemented by three ministerial decisions.

(i) By decision no. 18443/1509 of 1 October 1974, a seven-member committee was formed "for the purposes of managing and administering the estate of the royal family".

(ii) By decision no. 21987 of 24 October 1974, it was provided that "the handing over [of the property] of the royal family from the State to the committee" was to be made by 31 December 1974.

(iii) By decision no. 25616 of 23 December 1974, it was provided that the handing over of the property of the royal family to the committee would continue until completion, before the handing over to its owners or to a person nominated by them.

33. Between 1974 and 1979 all the movable and immovable property of the former King and the royal family in Greece was administered and managed in the name of the committee established pursuant to Legislative Decree no. 72/1974, on behalf of the former King and the royal family. In 1979 the movable property was handed over to them.

34. On 17 November 1974 there were elections to the National Assembly, and the Assembly was thereafter reconvened. A referendum was held on 8 December 1974, the outcome of which was in favour of a parliamentary republic. By Resolution D18 of 18 January 1975, the National Assembly resolved and declared, *inter alia*, that democracy in Greece was never lawfully abolished, and that the revolutionary coup of 21 April 1967, as well as the situation which resulted as a consequence up to 23 July 1974, constituted a *coup d'état* which aimed to usurp power and the sovereign rights of the people.

35. In 1975 the National Assembly enacted the present Constitution, which came into force on 11 June 1975.

36. In 1981 the PA.SO.K. (Panhellenic Socialist Party), under the leadership of Mr Papandreou, was elected to power in Greece. From January 1984 onwards, discussions were held with the former King regarding his property. By 1988 an agreement on principle had been reached between the government and the former King relating to the property and tax liabilities of the royal family. However, the agreement was never executed.

C. The 1992 agreement

37. In 1990 the conservative "New Democracy" Party was elected to power.

38. In 1992 an agreement was reached between the former King and the Greek State, which provided as follows.

(i) The former King transferred an area of 200,030 sq. m. of his forest at Tatoi to the Greek State for the sum of GRD 460,000,000.

(ii) The former King donated an area of 401,541.75 sq. m. of his forest at Tatoi to a foundation for the benefit of the public, namely the Universal Hippocration Medical Foundation and Research Centre.

(iii) A foundation for the benefit of the public, namely the National Forest of Tatoi Foundation, was created and the former King donated an area of 37,426,000 sq. m. of his forest at Tatoi to the foundation.

(iv) The former King, the royal family and the Greek State waived all legal rights in connection with and discontinued all pending legal proceedings concerning the royal family's tax liabilities.

(v) The former King and the royal family agreed to pay to the Greek State the sum of GRD 817,677,937 in respect of inheritance tax, income tax and capital taxes, together with interest and surcharges. The payment to be made by the former King would be set off against any sums due to the former King pursuant to the agreement.

39. The agreement was contained in and evidenced by notarial deed no. 10573/1992 of 3 June 1992. On 28 September 1992 the Division of Scientific Studies (διεύθυνση Επιστημονικών Μελετών) of the Greek parliament issued a report on a draft bill ratifying the above-mentioned notarial act. The report stated, *inter alia*, that Legislative Decree no. 225/1973 was repealed by Legislative Decree no. 72/1974 and that the property thereby "reverted to its former ownership status". Subsequently the agreement was incorporated in and given the force of law by Law no. 2086/1992.

D. Invalidation of the 1992 agreement – Law no. 2215/1994

40. In the summer of 1993 the former King and his family visited Greece.

41. Following the autumn 1993 elections, a government under the leadership of Mr Papandreou was again returned to power in Greece. The new government declared their intention of dealing with the matters relating to the property of the former royal family, in order to restore "constitutional legality and historical memory" and to satisfy "the democratic sensibility of the Greek people as this was expressed by the referendum of 1974" [Statement of 1 April 1994 of the then Minister of Finance.]. They eventually introduced Law no. 2215/1994 which was passed by Parliament

on 16 April 1994 and became law with effect from 11 May 1994. It was entitled "Settlement of matters pertaining to the expropriated property of the deposed royal family of Greece", and provided as follows.

(i) Law no. 2086/1992 was repealed and deed no. 10573/1992 rescinded. Any acts carried out pursuant thereto were void and of no legal effect (section 1). The acts so declared void and of no legal effect included the donation to the Universal Hippocration Medical Foundation and Research Centre at Tatoi and to the National Forest of Tatoi Foundation [*Note*: On 8 December 1997 the National Forest of Tatoi Foundation lodged an application with the European Commission of Human Rights under former Article 25 of the Convention. The application was registered on 4 February 1998 (no. 39654/98). On 1 November 1998, by virtue of Article 5 § 2 of Protocol No. 11, the application fell to be examined by the European Court of Human Rights.].

(ii) The Greek State became the owner of the movable and immovable property of the former King, Princess Irene and Princess Ekaterini. Legislative Decree no. 225/1973 was deemed to have remained in force (section 2).

(iii) Title to the Mon Repos property on the island of Corfu was transferred to the municipality of Corfu (section 4(2)).

(iv) Taxes already assessed were written off. All legal proceedings pending before the administrative courts or the Supreme Administrative Court (Συμβούλιο της Επικρατείας) in respect of inheritance and other taxes, surcharges and penalties were discontinued. Amounts paid by the former King and other members of the royal family in respect of tax could be claimed back from the Greek State, but the State could oppose any set-off of such a claim against any claim of the State against the royal family (section 5(1)).

(v) Any agreements concerning any property of the royal family, except leasehold agreements, would be declared void. Any leases of land belonging to the royal family would continue as if entered into between the lessees and the Greek State (section 5(2)).

(vi) Any legal proceedings brought by the former King or other members of the royal family before any Greek court using the designation "King" or any other royal designation, even if combined with the prefix "ex" or "former", would be regarded as void (section 6(4)).

(vii) Preconditions were imposed for the continued recognition of the Greek nationality of the former King and the royal family, and for the retention of their Greek passports:

– a declaration was to be submitted to the Registrar of Births, Marriages and Deaths (ληξιαρχείο) of Athens to the effect that the former King and the royal family unreservedly respected the 1975 Constitution and accepted and recognised the Hellenic Republic;

– a further declaration was to be submitted to the Registrar to the effect that the former King and the royal family unreservedly waived any claim relating to the past holding of any office or possession of any official title;

– the former King and the members of the royal family were to register in the Municipal Register of Citizens (μητρώα αρρένων ή δημοτολόγια) under a name and a surname;

(viii) any legislative provision contrary to this legislation was automatically repealed (section 6(5)).

E. Proceedings in the Greek courts

42. The applicants brought several proceedings in the Greek courts concerning the titles to their estates.

43. The applicants also challenged the constitutionality of Law no. 2215/1994. Following two conflicting judgments of the Court of Cassation (Αρειος Πάγος) and the Supreme Administrative Court, the case was referred to the Special Supreme Court (Ανώτατο Ειδικό Δικαστήριο).

The Special Supreme Court judgment of 25 June 1997

44. The court first examined whether the applicants were entitled to bring legal proceedings before it without using a surname. The court held that "the indication 'former King' is mentioned in the legal documents not as a title of nobility which is forbidden by the Constitution, but in order to define the identity of this litigant, who for the reasons stated earlier, has no surname ... It concerns a reference to a historic fact which, like other elements, can indeed designate the identity of the above person, so that this person may enjoy judicial protection".

45. As regards the question of the royal property, the court stressed that "it was from the beginning a political question", that the property rights of the applicants were linked to the form of government and that "during the reign of the royal family, the property that belonged to the King and the royal family was treated like a special category of property". The court noted, *inter alia*, the following:

> "When the Constitution by Article 1 defines the form of the regime, by the same provision, which [should be] historically interpreted in the framework of the political and constitutional conjuncture ... in which it was voted, pursuant to the provisions of the First Constitutional Act and of Legislative Decree no. 72/1974 that was issued on the basis of its Article 10, it also solves the issue of the royal property. In other words, the referendum renders irrevocable the devolution of this property to the State, so that its return by law to the former King would be contrary to the Constitution. Therefore, section 1 of Law no. 2086/1992 ..., which implies that the former royal property would continue to belong to the deposed monarch and the members of the former royal family, and actually connects those persons with the property, contravenes the Constitution."

46. Consequently, the Special Supreme Court, by thirteen votes to four, held that Law no. 2215/1994 was constitutional. Under the Constitution, the judgments of the Special Supreme Court are final and binding on all Greek courts (Article 100 § 4).

II. RELEVANT DOMESTIC LAW

47. The relevant Articles of the 1975 Constitution provide as follows:

Article 4

"1. All Greeks are equal before the law.

2. Greek men and women have equal rights and equal obligations."

Article 17

"1. Property is protected by the State; rights deriving therefrom, however, may not be exercised contrary to public interest.

2. No one shall be deprived of his property except in the public interest, which must be duly shown, when and as specified by law and always following full compensation corresponding to the value of the expropriated property at the time of the court hearing on the provisional determination of compensation. In cases in which a request for the final determination of compensation is made, the value at the time of the court hearing of the request shall be considered.

...

4. Compensation shall in all cases be determined by civil courts. Such compensation may also be determined provisionally by the court after hearing or summoning the beneficiary, who may be obliged, at the discretion of the court, to furnish a commensurate guarantee for collecting the compensation as provided by law."

48. In Greece the number of property rights is limited (*numerus clausus*). The real rights that a person may have are ownership, easements, pledge and mortgage (Article 973 of the Civil Code).

49. Articles 999 to 1141 of the Civil Code deal with the institutions of ownership and co-ownership. Ownership may be acquired in a variety of ways, as by occupancy of things that belong to no one, by transfer from a previous owner or even by a non-owner, by operation of law, by the effect of judgments, and by acts of the public authorities. For the transfer of the ownership of immovables, the law requires an agreement between the owner and the transferee that the ownership is transferred for a lawful cause, the incorporation of this agreement in a notarial deed and its transcription at the transcription registry in the district in which the immovable is located (Article 1033).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

50. The applicants complained that Law no. 2215/1994 violated their right of property. They relied on Article 1 of Protocol No. 1, which provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

This provision comprises three distinct rules. The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and subjects it to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. These rules are not "distinct" in the sense of being unconnected: the second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, are to be construed in the light of the general principle laid down in the first rule.

A. Whether there was a "possession" within the meaning of Article 1 of Protocol No. 1

1. Arguments before the Court

51. The principal thrust of the Government's argument was that the contested estates were inextricably linked to the institution of the Head of State and therefore did not fall under the notion of "possessions" protected by Article 1 of Protocol No. 1.

As a general remark they noted that a common feature all over Europe was the existence of a clear-cut distinction between public and private possessions of monarchs. Public possessions were owned by the States and at the disposal of the monarchs to use in the performance of their duties as Heads of State. The Government submitted that such properties, held under

special privileges and immunities, did not come within the concept of property or possessions protected under Article 1 of Protocol No. 1. On the other hand, the private property of European monarchs was not treated differently in any way from the property of ordinary citizens. It was acquired, used and transferred in accordance with the ordinary rules of domestic civil law, as applied to all transactions between private individuals. According to the Government, it was reasonable to suppose that such private possessions were protected under Article 1 of Protocol No. 1.

52. In the present case the Government submitted that the most significant special feature of the legal status of the alleged "royal property" of the Greek Crown was that it had always had a *sui generis* and quasi-public character. This was demonstrated by various facts. First, the three contested estates had not been acquired by the former royal family in accordance with the general provisions of Greek civil law, but because of the functions of the beneficiaries. A substantial part of these properties were donated to the former Greek kings by the Greek State as a sign of respect towards the royal institution. Second, whenever a succession to the throne occurred, the general rules of inheritance law did not apply. On the contrary, a special law was always enacted to avoid the ordinary order of succession and settle the relevant disputes. Third, the alleged properties enjoyed full tax exemption, including exemption from inheritance tax. Had inheritance tax been applied in each of the four successions to the Greek throne from 1913 to 1964, the relevant tax burden would have exceeded the current market value of the contested estates. Fourth, the property in question had not only been assimilated to State property for procedural purposes (for example special time-limits, award of State privileges for the recovery of debts, prohibition of provisional forced execution), but had also benefited from substantial State prerogatives (non-prescription of claims, plain prohibition of usucaption, criminalisation of trespass, etc.). Therefore, no matter how each of the contested estates had been acquired, the land, which included constitutionally protected forests, historical and archaeological sites, had only been kept wholly intact and even added to because of the privileges attached to the monarchs' public status. No ordinary Greek citizen would ever have succeeded in legally acquiring and transferring this land.

53. In the light of the above, the Government considered that the contested estates were not privately owned; consequently, they did not fall under the notion of "possessions" protected by Article 1 of Protocol No. 1.

54. The applicants replied that there was manifestly no foundation whatever, as a matter of historical fact or Greek law, for the Government's novel and bizarre argument that the property which was the subject of their claim never belonged to the royal family. The applicants stressed that this argument had never been advanced by any Greek government except in the course of the proceedings before the Convention organs. The fact that individual members of the royal family had owned private property had

been consistently recognised by Greek public authorities throughout the period of the so-called “crowned democracy” which had been established when the first applicant's ancestor, George I, was elected King in 1863. It had also been consistently recognised after the creation of the Republic. Such private property had always been recognised as being distinct from any property that was made available to the royal family by virtue of the constitutional status of the King, for example, the Royal Palace in Athens, which was not and had never been the private property of the royal family. As regards certain privileges which were historically afforded in respect of their property, the applicants considered that those privileges had no bearing on the status of the royal family's private property. In any event, maintenance payments by the State some fifty years earlier had been made in recognition of the damage which had been caused to the properties during the period when they were in the possession of the State and had been neglected. As for the tax exemption, the applicants invited the Court to bear in mind that the King had paid all of the very considerable expenses incurred by him in the exercise of his official duties in his capacity as Head of State. Until 1949, the King had also had to pay all the maintenance and running costs of the palaces made available to him by the State in his capacity as Head of State out of the Civil List.

55. The applicants further submitted that the fact that the royal family owned private property had been clearly recognised even during the period of the unconstitutional military dictatorship between 21 April 1967 and 24 July 1974. The 1968 Constitution included a provision (Article 134 § 3), which provided for a unique legislative measure to be enacted to expropriate or confiscate the movable and immovable property of the former King and his family. A legislative decree (no. 225/1973) had subsequently been issued by the dictatorship to confiscate the property of the royal family. These measures would have served no purpose if the royal property had always belonged to the State. After the fall of the dictatorship, a legislative decree of 1974 had recognised that the property confiscated by the dictatorship belonged to the royal family, on whose behalf it was administered by a special committee. In 1979 the movable property was handed over to the royal family. Protocols governing the handing over of the immovable and movable property had been duly signed by the appropriate governmental authorities and by the special committee. The status of the property had in no way been affected by the outcome of the referendum of 8 December 1974 which had resulted in the establishment of a presidential parliamentary republic. The status of the property of the royal family had simply not been in issue in that referendum. Nor had the status of the property been affected by the enactment of the 1975 Constitution. If this had been the case, the State would not have returned the movable property to the royal family in 1979, thus recognising their rightful ownership.

56. Furthermore, the applicants stressed that from 1974 to 1996, namely even after the enactment of the 1994 Law, they had filed tax returns and paid tax in respect of the property in question. They could not understand how tax on the land could properly be payable by anyone other than the owner, or how the government could properly and in good faith have demanded and accepted the payment of such tax except on that basis.

57. Moreover, in 1992 the former King and the Greek State concluded an agreement, which was ratified by Law no. 2086/1992, by which large parts of the Tatoi property were transferred by the former King to the Greek State and donated to two foundations for the benefit of the public. This agreement was concluded on the basis that he was the owner of the property in question; otherwise it would have served no purpose. That the relevant property belonged to the royal family had even been acknowledged by Law no. 2215/1994 itself, which in its preamble referred to "Settlement of matters pertaining to the expropriated *property of the deposed royal family of Greece*" (emphasis added by the applicants). Furthermore, the applicants stressed that the 1994 Law expressly mentioned Legislative Decree no. 225/1973 enacted by the military dictatorship, under which the property of the royal family had been confiscated. Reference to that decree was wholly inconsistent with the Government's argument that the royal family never owned any private property; if the property already belonged to the State, the latter would not have needed to rely on a prior confiscation.

58. The applicants concluded that there was no basis in Greek law for making any connection between the constitutional role of the former King and the status of his property. Greek civil law did not recognise a so-called *sui generis* concept of ownership. Article 973 of the Greek Civil Code provided an exhaustive definition of ownership rights that were recognised as a matter of Greek law. These were ownership, easements, pledge and mortgage. There was no category of quasi-public ownership (see paragraph 48 above).

59. The Commission considered that before the coming into force of Law no. 2215/1994 the property in question belonged to the applicants.

2. The Court's assessment

60. The Court points out that the concept of "possessions" in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is independent from the formal classification in domestic law (see *Beyeler v. Italy* [GC], no. 33202/96, § 100, ECHR 2000-I). The issue that needs to be examined is whether the circumstances of the case, considered as a whole, conferred on the applicants title to a substantive interest protected by Article 1 of Protocol No. 1. The Court considers that that approach requires it to take account of the following points of law and of fact.

61. To start with, the Court is unable to agree with the Government when they suggest, at least by implication, that the members of the royal family did not have any private property at all in Greece.

It notes that at least part of the royal property was purchased by the applicants' ancestors and paid for out of their private funds. Furthermore, on many occasions, the royal property, irrespective of its original title, was subsequently transferred *inter vivos* or *mortis causa*, in accordance with the requirements of Greek civil law, between members of the royal family and on some occasions between members of the royal family and third parties.

62. Moreover, the Court takes particularly into account the fact that before the coming into force of Law no. 2215/1994, the Greek State had on several occasions treated the members of the royal family – and among them the applicants – as being the private owners of the estates in question. The Court refers by way of example to the following facts.

– After the abolition of the monarchy in 1924, the Greek State expropriated the Tatoi estate, which was later given back to the King in full ownership and possession upon his return to the throne in 1936 (see paragraphs 12-13 above).

– Following a compulsory expropriation which took place in 1923, Emergency Law no. 514/1937 expressly provided that Mon Repos be conceded and transferred in full ownership and possession to Prince Andreas (see paragraph 19 above).

– It was not disputed that from 1974 to 1996 the applicants filed tax returns and paid tax in respect of their property (see paragraphs 36, 38, 41 and 56 above).

– In 1992 a binding agreement was concluded between the former King and the Greek State whereby, among other things, 200,030 sq. m. of the Tatoi estate were sold by the first applicant to the Greek State and most of the rest of the estate was donated to two foundations for the benefit of the public. On 28 September 1992 the Division of Scientific Studies of the Greek parliament issued a report on a draft bill ratifying this agreement, which stated, *inter alia*, that Legislative Decree no. 225/1973 was repealed by Legislative Decree no. 72/1974 and that the property thereby "reverted to its former ownership status" (see paragraphs 38-39 above).

63. Like the Commission, the Court is of the view that all these acts could only be carried out on the basis that the applicants and their ancestors were the owners of the property in question, since if the contested estates had never belonged to the royal family, or if they had been validly expropriated in 1973, with the result that they were already owned by the Greek State, the said acts would have served no purpose.

64. Finally, as regards the Government's reference to special rules which applied to royal property, such as rules on tax exemption, the Court cannot see why such rules should *per se* exclude the fundamentally private character of these properties. It is not, for example, unknown for Heads of

States to enjoy tax immunity as far as their private property is concerned. Likewise, the Government have failed to provide any documentation, such as a register of State property or the so-called Civil List, showing that the royal property has been considered or treated as State property.

65. In view of the above, the Court cannot but discern a contradiction in the Government's attitude to the relevant properties. Consequently, although the Court accepts that the royal property in many ways enjoyed a special status, the fact that the Greek State itself repeatedly treated it as private property and had not produced a general set of rules governing its status prevents the Court from concluding that it had a *sui generis* and quasi-public character to the effect that it never belonged to the former royal family.

66. Therefore, the Court is of the opinion that the relevant properties were owned by the applicants as private persons rather than in their capacity as members of the royal family; accordingly the contested estates constituted a "possession" for the purposes of Article 1 of Protocol No. 1, which is applicable to the instant case.

B. Inventory of the applicants' possessions

67. The Court must now consider what exactly are the applicants' possessions.

1. The Tatoi estate (of a total surface area of 41,000,000 sq. m. approximately)

68. The Government argued that more than one-third of the estate, namely the Bafi forest, was donated to King George I (the first applicant's great-grandfather) by an Act of Parliament in 1877. Obviously, the *causa traditionis* and/or the *iusta causa* of this donation was the royal function of the transferee. That was the reason why, after the abolition of the monarchy in 1924, the Bafi land came *ipso jure* and without any compensation to the State. Moreover, 3,785,000 sq. m. of this land were donated to homeless refugees in 1925; this area was never returned to the royal family after the restoration of the monarchy in 1935.

Furthermore, the Government noted that in 1992 the first applicant had donated to a non-profit foundation (the National Forest of Tatoi Foundation) more than 90% of the Tatoi land. Subsequently, the foundation had lodged an application with the Commission, which was now pending before the Court (application no. 39654/98). It was true that Law no. 2215/1994 had repealed the 1992 agreement, but at the time the 1994 Law had been enacted, the applicants had had ownership rights over less than 10% of the Tatoi estate.

69. The applicants alleged that the Bafi forest had not been donated to King George I, but had been purchased by him. In this connection, the

applicants relied on documents which had come to their attention since the adoption of the Commission's report, which demonstrated that while the Greek government had expressed the intention of donating the Bafi forest to King George I, the latter had not wished to acquire this land through donation, but had insisted on purchasing it at a price fixed by the government. In the event, a compromise had been reached, whereby the Bafi forest was expressed to be "conceded" (rather than "donated") to King George I. In return, the latter had deposited 60,000 drachmas (GRD) with interest at the National Bank.

70. The Court notes that part of Tatoi was originally purchased by King George I as his private property. The estate was subsequently added to through the acquisition by King George I from the Greek State of an area of land known as the Bafi forest (see paragraph 9 above). Notwithstanding the manner of acquisition of these lands, disputed by the parties, their ownership status was settled as follows: In 1924 Tatoi, including the Bafi forest, was compulsorily expropriated by the Greek State without payment of any compensation. In 1936, following the restoration of the monarchy, a law returned Tatoi to the ownership and possession of King George II. This reinstatement of property included the Bafi land except an area of 3,785,000 sq. m. which had in the meantime been allotted to homeless refugees. Therefore, the Court is of the opinion that, with the exception of this area which was never returned to the applicants' predecessors in title, the Tatoi lands constituted part of the property which was expropriated in 1994.

71. Furthermore the Court is unable to agree with the Government when they argue that, at the time the 1994 Law was enacted, the applicants had ownership rights over less than 10% of Tatoi. It is true that in 1992 large parts of the estate were donated by the first applicant to two foundations for the benefit of the public and that an area of 200,030 sq. m. was sold to the Greek State. However, Law no. 2215/1994 repealed the 1992 agreement and declared void and of no legal effect any acts carried out pursuant to it (see paragraph 41 above). To suggest that, although the 1992 agreement was repealed by a later law, its legal consequences were still valid and should be taken into account is not only contradictory as such, but also runs against the principle *lex posterior derogat anteriori*.

72. Having regard to the foregoing, the Court considers that before the entry into force of Law no. 2215/1994 the Tatoi estate, with the exception of an area of 3,785,000 sq. m. which was expropriated in 1924 and allotted to homeless refugees, belonged to the first applicant.

2. The Polydendri estate (of a total surface area of approximately 33,600,000 sq. m.)

73. The Court notes that the Government have not argued that the Polydendri estate had in any respect a special status comparable with that of

the Tatoi and the Mon Repos estates. There is no evidence to suggest that the ownership titles relating to this property, which the applicants have produced, are not accurate (see paragraph 15 above). It therefore considers that before the entry into force of Law no. 2215/1994 the Polydendri estate belonged to the three applicants.

3. The Mon Repos estate (of a total surface area of 238,000 sq. m.)

74. The Government submitted that the use of this estate had been given to King George I in his capacity as Head of State, his royal function being the only *causa traditionis*. Even assuming that by virtue of these donations the former royal family had acquired ownership rights over Mon Repos, its transfer both in 1864 and in 1937 was legally valid only under the implicit but self-evident condition that the transferees would continue to exercise their functions.

Moreover, the Government claimed that the applicants could not have acquired ownership rights over Mon Repos through usucaption, since, as of 9 September 1915, Greek law explicitly excluded usucaption as a mode of acquisition of State properties.

75. The applicants maintained that this property had never belonged to the Greek State. It had been donated to King George I in 1864 by the Provincial Council of the island of Corfu, in recognition of his contribution to the accession of the Ionian islands to Greece. This donation was expressly recognised by deed no. 7870/1887. The property had been added to by private purchases of land by King George I and, subsequently, by King George II.

76. The Court accepts that the original title on Mon Repos is a donation by which the Provincial Council of the island of Corfu transferred to King George I the use of what formed the first part of the estate. However, it notes that, according to the ordinary provisions of Greek civil law, property rights may be acquired by a variety of ways, as by transfer from a previous owner, and that donation is undoubtedly one of the valid ways of transferring and acquiring property rights. Moreover, the Court considers that the Government have failed to substantiate their argument that the capacity of King George I as Head of State was the only *causa traditionis* of Mon Repos. Furthermore, it notes that the estate was subsequently enlarged by successive purchases of land belonging to third parties, and that the State does not seem to have been involved in the relevant contracts. In 1937 a law transferred the estate in full ownership and possession to Prince Andreas. Following a chain of transfers, the first applicant acquired full ownership of Mon Repos, by virtue of his father's holograph will (see paragraph 20 above).

77. Having regard to the foregoing, the Court considers that before the entry into force of Law no. 2215/1994 the Mon Repos estate belonged to the first applicant.

C. Compliance with Article 1 of Protocol No. 1

1. Whether there has been an interference with the right of property

78. Having accepted that before the entry into force of Law no. 2215/1994 the property in question belonged to the applicants, the Court, like the Commission, considers that in 1994 there was an interference with the applicants' right to the peaceful enjoyment of their possessions which amounts to a "deprivation" of possessions within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1.

The Court must therefore examine whether the interference complained of can be justified under that provision.

2. Whether the interference was "provided for by law"

79. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: the second sentence of the first paragraph authorises a deprivation of possessions only "subject to the conditions provided for by law" and the second paragraph recognises that the States have the right to control the use of property by enforcing "laws". Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention (see the Amuur v. France judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, pp. 850-51, § 50).

80. The Government submitted that both Legislative Decree no. 225/1973 and Law no. 2215/1994 were "laws" within the meaning of Article 1 of Protocol No. 1 since they were adequately accessible and sufficiently precise. The first had remained in force after the restoration of democracy and the second was voted in Parliament following an open and democratic debate. Undeniably, both these laws had an individual character. However, the circumstances of the case were unique: in any recent republic there was only one former royal family. Such a family was not in a position comparable to that of any other family. Legislation relating to their property would, by definition, relate to that family alone; still, that could not deprive the legislation of its legitimacy.

81. The applicants alleged that, although Law no. 2215/1994 purported retrospectively to authorise a deprivation of their property, it lacked the essential requirement of a "law", since not only was it arbitrary, punitive and discriminatory, but it also breached Article 17 of the Greek Constitution, which required a taking of property to be in the public interest and against payment of full compensation. As for Legislative Decree no. 225/1973, the applicants submitted that it amounted to an arbitrary act of confiscation by the military dictatorship, which was in any event completely irrelevant to the taking of their property in 1994.

82. Like the Commission, the Court considers that Law no. 2215/1994 constitutes the sole legal basis for the interference complained of. The Court notes that the law upon which the interference is based should be in accordance with the internal law of the Contracting State, including the relevant provisions of the Constitution. It is true that in the present case the applicants have contested the constitutionality of this Law before the domestic courts and the Convention organs and have argued that the challenged provisions, being unconstitutional, did not offer a valid legal basis for the deprivation of property of which they complain. However, the applicants' complaints of the unconstitutionality of Law no. 2215/1994 have been examined and rejected by the Special Supreme Court in its judgment of 25 June 1997 (see paragraph 46 above). The Court observes that it is in the first place for the domestic authorities, notably the courts, to interpret and apply the domestic law and to decide on issues of constitutionality. Having regard to the judgment of the Special Supreme Court, the Court cannot find that Law no. 2215/1994 was unconstitutional. To sum up, the deprivation was provided for by law, as required by Article 1 of Protocol No. 1.

3. Whether the interference was "in the public interest"

83. The Court must determine next whether this deprivation of possessions pursued a legitimate aim "in the public interest", within the meaning of the second rule under Article 1 of Protocol No. 1.

84. The Government submitted that in addition to the State's legitimate interest in protecting the forests and the archaeological sites within the three contested estates, the 1994 Law was linked to the major public interest in preserving the constitutional status of the country as a republic. History showed in all abolished European monarchies that, with the exception of the private property of King Manuel II of Portugal, the private possessions of all former monarchs or emperors were in one way or another expropriated without compensation or without full compensation. Moreover, the reason why the Law of which the applicants complained had been enacted only in 1994 was simply that complicated legal and political issues took a long time to resolve.

85. The applicants claimed that the taking of their property was not part of any national economic or social programme and that the 1994 Law did not itself explain why it was necessary. In particular, as regards the allegation that the taking of their property was motivated by the need to protect the forests and the archaeological sites within the three estates in question, the applicants maintained that during all the years when the relevant forests and archaeological sites were in the possession of the royal family, there had never been any complaint as to the way in which they were looked after; in the applicants' eyes that argument by the Government wholly lacked credibility. Furthermore, they considered that the

Government had not explained how the public interest was served by a taking of the private property of the former monarch. The private property of a former monarch and his family was by definition unconnected with his former role as Head of State, and was in no way linked to the constitutional transition from a monarchy to a republic. And, in any event, this transition took place in 1975, almost twenty years before the enactment of Law no. 2215/1994. The applicants stressed that the former King had on several occasions formally acknowledged the Hellenic Republic, to which he presented no threat whatsoever. Moreover, there had been no disputes between the applicants and the Greek State concerning the applicants' property or any other matters at the time of the enactment of the 1994 Law .

In the light of all the above, the applicants considered that the Government had failed to offer any credible or sufficient justification for the taking of their property, which had been motivated by political and personal antipathy, rather than by any genuine desire to serve the public interest.

86. The Commission considered that the Greek State's belief in the existence of a political need to settle the matters relating to the property of the former royal family could not be characterised as manifestly unreasonable.

87. The Court is of the opinion that because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is “in the public interest”. Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures of deprivation of property. Here, as in other fields to which the safeguards of the Convention extend, the national authorities accordingly enjoy a certain margin of appreciation.

Furthermore, the notion of “public interest” is necessarily extensive. In particular, the decision to enact laws expropriating property will commonly involve consideration of political, economic and social issues. The Court, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, will respect the legislature's judgment as to what is “in the public interest” unless that judgment is manifestly without reasonable foundation (see the James and Others v. the United Kingdom judgment of 21 February 1986, Series A no. 98, p. 32, § 46). The same applies necessarily, if not *a fortiori*, to such fundamental changes of a country's constitutional system as the transition from a monarchy to a republic.

88. The Court notes that there is no evidence to support the Government's argument on the need to protect the forests and archaeological sites. On the other hand, it does not doubt that it was necessary for the Greek State to resolve an issue which it considered to be prejudicial for its status as a republic. The fact that the constitutional

transition from a monarchy to a republic took place in 1975, namely almost twenty years before the enactment of the contested Law, might inspire some doubt as to the reasons for the measures, but it cannot suffice to deprive the overall objective of Law no. 2215/1994 of its legitimacy as being "in the public interest".

4. Proportionality of the interference

89. An interference with the peaceful enjoyment of possessions must strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see, among other authorities, the Sporrong and Lönnroth v. Sweden judgment of 23 September 1982, Series A no. 52, p. 26, § 69). The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole, including therefore the second sentence, which is to be read in the light of the general principle enunciated in the first sentence. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his possessions (see the Pressos Compania Naviera S.A. and Others v. Belgium judgment of 20 November 1995, Series A no. 332, p. 23, § 38).

Compensation terms under the relevant legislation are material to the assessment whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on the applicants. In this connection, the Court has already found that the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference and a total lack of compensation can be considered justifiable under Article 1 of Protocol No. 1 only in exceptional circumstances (see the Holy Monasteries v. Greece judgment of 9 December 1994, Series A no. 301-A, p. 35, § 71).

90. In the present case there is no provision for compensation in Law no. 2215/1994. Having regard to the fact that it has already been established that the interference in question satisfied the requirement of lawfulness and was not arbitrary, the lack of compensation does not make the taking of the applicants' property *eo ipso* wrongful (see, *a contrario*, the Papamichalopoulos and Others v. Greece (*Article 50*) judgment of 31 October 1995, Series A no. 330-B, pp. 59-60, § 36). It remains therefore to be examined whether in the context of a lawful expropriation the applicants had to bear a disproportionate and excessive burden.

91. The Government stated that in assessing fair balance and proportionality the Court should allow the Contracting State a broad margin of appreciation. That was because there was no requirement of "necessity" in Article 1 of Protocol No. 1 and decisions in this area commonly involved the assessment of political, economic and social questions on which opinions within a democratic society might genuinely and reasonably differ

widely. The margin of appreciation was especially wide when, as here, the former royal family had come into possession of the relevant properties for reasons based on their royal status. The democratic legislature was entitled to consider that, as part of the constitutional settlement, the former royal family had no right to demand compensation (far less full compensation) for what they had acquired because of their royal duties. In other words, exceptional circumstances – such as the ways in which the property was acquired and used, the privileges which were in the past afforded to the former royal family, the tax exemptions for the royal estates and the maintenance of the latter at the expense of the Greek State – justified the absence of any compensation.

92. In any event, the Government noted that Law no. 2215/1994 covered indirectly the issue of compensation by providing for the writing off of all the taxes owed by the former royal family to the Greek State from 1974 onwards. In this way, the former royal family had been spared payment of substantial tax debts. Furthermore, Legislative Decree no. 225/1973, which the 1994 Law maintained in force, provided for pecuniary compensation as well, amounting to GRD 120,000,000. This sum had been placed at the disposal of the applicants but was never collected by them, no doubt for political reasons associated with their wish to remain on the throne.

93. Finally, the Government submitted that the commercial value of the contested estates had been significantly reduced. Both Tatoi and Polydendri were forest land, therefore subject to a special protected status: their use could not be changed and they would always remain forests; they could not be divided up into smaller parcels of land; their exploitation was under the supervision of the State. Consequently, there was no buyer interest in them and their real commercial value was insignificant. Moreover, the restrictions on their exploitation, in connection with the high cost of maintaining, guarding and operating them, reduced their real market value. Their commercial value was further reduced by the fact that they included archaeological sites, which could not be commercially exploited by private citizens. In this connection, the Government stressed that at the Mon Repos estate there was an extensive archaeological site, Paleopolis, which was believed to have been the capital of the Phaecians in Antiquity. For this reason, the Ministry of Culture had already designated 23 ha of the estate as a protected area.

94. The applicants submitted that the taking of their property with no provision for the payment of compensation was wholly disproportionate. They considered that, as a matter of legal principle and logic, the manner of acquisition of a property had no bearing on the extent to which proportionality required that there should be compensation for its taking. The fact that a person had acquired a piece of property as a gift, or by inheritance, did not mean that the property had no value for the owner, so that it could be taken without compensation. The requirement of

proportionality demanded that the owner be fairly compensated for what he had lost, regardless of how he (or his predecessors in title) had acquired the property which had been taken.

95. Furthermore, they submitted that any privileges afforded in the past to the former King and his family by virtue of the former King's position as Head of State, or any tax exemptions which were available to the royal family, were irrelevant to the question of proportionality as regards the arbitrary taking of their private property. This was so *a fortiori* in relation to privileges or tax exemptions which might have been available to the applicants' predecessors, but which had not been afforded to the applicants themselves; further, since 1974, the applicants had had no tax privileges whatsoever. In any event, this was not a case in which there were cross-claims as between a creditor and a debtor, which could properly be set off against each other so as to extinguish or reduce the creditor's claim. The Government were obliged under the Greek Constitution and the Convention to compensate the applicants for the value of their property. There were no reciprocal or mutual debts to be set off against each other.

96. Finally, the applicants disputed the Government's argument that the contested estates had very little commercial value.

97. The Commission concluded that Law no. 2215/1994 did not preserve a fair balance between the various interests in question as required by Article 1 of Protocol No. 1.

98. The Court considers that the Government have failed to give a convincing explanation as to why the Greek authorities have not awarded any compensation to the applicants for the taking of their property. It accepts that the Greek State could have considered in good faith that exceptional circumstances justified the absence of compensation, but this assessment is not objectively substantiated.

In the first place, the Court points out that at least part of the expropriated property was purchased by the applicants' predecessors in title and paid out of their private funds. Moreover, compensation was provided for the last time the property was expropriated, in 1973. Therefore, the Court considers that the applicants had a legitimate expectation to be compensated by the Greek legislature for the taking of their estates.

Furthermore, as regards the Government's argument that the issue of compensation was indirectly covered, the Court notes first that compensation provided for by Legislative Decree no. 225/1973 is irrelevant to the instant case, Law no. 2215/1994 being the sole legal basis for the interference of which the applicants complain. Nor can the circumstances to which the Government refer be regarded as payment of compensation. In this respect the Court agrees with the applicants when they argue that in the context of the expropriation in question there are no reciprocal or mutual debts to be set off against each other. The privileges afforded in the past to the royal family or the tax exemptions and the writing off of all the taxes

owed by the former royal family have no direct relevance to the issue of proportionality, but could possibly be taken into account in order to make an accurate assessment of the applicants' claims for just satisfaction under Article 41 of the Convention.

99. Therefore the Court is of the opinion that the lack of any compensation for the deprivation of the applicants' property upsets, to the detriment of the applicants, the fair balance between the protection of property and the requirements of public interest.

There has accordingly been a violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No. 1

100. The applicants complained that they have been the victims of discrimination in relation to the enjoyment of their property rights protected by Article 1 of Protocol No. 1, in breach of Article 14 of the Convention. Article 14 of the Convention reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

101. The applicants submitted that Law no. 2215/1994 was a unique measure directed at one particular family. The Law itself contained no explanation as to why it was enacted, but it was clear that it was motivated by personal and political antipathy towards the applicants, on the ground of their status as members of the royal family. They considered that they had been singled out for adverse treatment based on vindictive and punitive reasons, and that the difference of treatment lacked any objective and reasonable justification.

102. The Government submitted that Law no. 2215/1994 was directed exclusively at the former royal family because no other persons were in a comparable situation of having enjoyed such privileges and benefits which needed to be reconsidered on the abolition of the monarchy and the restoration of democracy.

103. In view of its finding of a violation concerning the applicants' right to the peaceful enjoyment of their possessions (see paragraph 99 above), the Court, like the Commission, does not consider it necessary to examine the applicants' allegation of a breach of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

104. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

105. As their main claim, the applicants sought the annulment of Law no. 2215/1994 and the return of the disputed estates together with compensation for non-pecuniary damage and costs and expenses incurred in vindicating their rights. In the event of the estates not being returned they said that they could see no reason why the amount of compensation should be less than the full current value of the property.

In particular, the applicants claimed GRD 165,562,391,740 for their immovable property, plus 3,416,330 pounds sterling (GBP) for their personal movable property (furniture, paintings, books, etc.). They further claimed GBP 100,000 for non-pecuniary damage, but on the basis that this sum was to be given to the victims of the earthquake which had struck Athens in September 1999. Lastly, they claimed GBP 644,502.42 in respect of costs and expenses in the national courts and before the Convention institutions up to the date of the hearing before the Court.

106. The Government submitted that if the Court were to find a breach of Article 1 of Protocol No. 1, it would be necessary to give the parties an opportunity to make further observations on the issue of just satisfaction.

107. The Court considers that the question of the application of Article 41 is not ready for decision. Accordingly, it shall be reserved and the subsequent procedure fixed having regard to any agreement which might be reached between the Government and the applicants (Rule 75 § 1 of the Rules of Court).

FOR THESE REASONS, THE COURT

1. *Holds* by fifteen votes to two that there has been a violation of Article 1 of Protocol No. 1;

2. *Holds* unanimously that it is not necessary to examine the applicants' complaint under Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1;

3. *Holds* unanimously that the question of the application of Article 41 is not ready for decision; accordingly,
   (a) *reserves* the said question in whole;

(b) *invites* the Government and the applicants to submit, within the forthcoming six months, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
(c) *reserves* the further procedure and *delegates* to the President of the Grand Chamber power to fix the same if need be.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 23 November 2000.

Luzius WILDHABER
President

Maud DE BOER-BUQUICCHIO
Deputy Registrar

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Mr Koumantos joined by Mr Zupančič is annexed to this judgment.

L.W.
M.B.

PARTLY DISSENTING OPINION OF JUDGE KOUMANTOS JOINED BY JUDGE ZUPANČIČ

(Translation)

I voted against the finding of a violation of Article 1 of Protocol No. 1. Article 1 is intended to protect private property belonging to natural or legal persons. It is not applicable to property assigned to certain persons in connection with their public duties, even where such property also retains some features governed by private law. In such cases the property is subject to a *sui generis* regime, part public and part private, which excludes application of Article 1 of Protocol No. 1.

That is the case with regard to the possessions of the former royal family of Greece for the following reasons, which apply to all the separate pieces of property making up those possessions: (a) a large proportion of the property concerned originated in gifts from the State or other public entities which would not have been made and could not have been made under the Constitution if the donee had not exercised royal powers; (b) these possessions have always been subject to a favourable special regime concerning the rules of succession, taxation (inheritance, transfer and, until 1974, income), procedural and substantive privileges (no limitation period for claims, no acquisition by adverse possession, criminal penalties for trespass), maintenance costs and remuneration of the staff employed there; (c) whenever the political circumstances were favourable, the royal family's rights over these possessions were confirmed by special laws, which would have been unnecessary if these rights had been governed solely by "ordinary" civil law; (d) Legislative Decree no. 72/1974 (after the fall of the dictatorship and the re-establishment of democracy) provided for special administration of the royal possessions "until final determination of the form of government", thus expressly linking the fate of these possessions with the form of government (republic or monarchy).

With regard to specific possessions of the former royal family, the following facts must be taken into consideration: (a) the property Mon Repos in Corfu was, at the outset, placed at the King's disposal for his "use"; (b) the will signed by King George I in 1904 stipulated that the property of Tatoi was to be used as the "permanent residence of the *reigning* King of the Hellenes"; (c) when, in 1917, King Constantine was obliged to abdicate in favour of his second son, who became King Alexander I, the latter acquired the property of Tatoi in his father's lifetime despite the existence of co-heirs as defined by the "ordinary" civil law; (d) after the

death of Alexander I in 1920 and the restoration of Constantine I, the property of Tatoi passed to Constantine once more and not to the heirs of Alexander I; (e) after the death of Constantine I, the property of Tatoi passed to his first-born son and successor to the throne and not to his other heirs.

In addition, the Tatoi property must remain outside the scope of the present application since (a) it is the subject of another application to be examined by the Court lodged by the foundation to which it was donated and (b) the applicant himself expressly declared that his application did not concern that property (see the applicants' memorial of 12 April 2000, footnote 16).